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6                   UNITED STATES DISTRICT COURT  
7                   EASTERN DISTRICT OF WASHINGTON  
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9                   CONSERVATION NORTHWEST, a  
10                  Washington non-profit corporation,  
11                  and CASCADIA WILDLANDS PROJECT, an  
12                  Oregon non-profit corporation,

13                  Plaintiffs,

14                  v.

15                  The UNITED STATES FOREST SERVICE,  
16                  an agency of the United States  
17                  Department of Agriculture,

18                  Defendant.

19                  NO. CV-05-0220-EFS

20                  **ORDER GRANTING PLAINTIFFS'**  
21                  **MOTION FOR TEMPORARY**  
22                  **RESTRANING ORDER,**  
23                  **GRANTING PROPOSED**  
24                  **INTERVENOR'S MOTION,**  
25                  **RULING ON MOTIONS FOR**  
26                  **OVERLENGTH BRIEF, AND**  
                     **SETTING PRELIMINARY**  
                     **INJUNCTION HEARING**

27  
28                  A telephonic hearing was held in the above-captioned matter on July  
29                  25, 2005, to hear Plaintiffs' Motion for Temporary Retraining Order.  
30                  Karen Lindholdt, Dave Werntz, and Regan Smith appeared on behalf of  
31                  Plaintiffs. Assistant United States Attorney William Beatty and Julia  
32                  Jones appeared on behalf of the United States Forest Service. Val Black  
33                  also represented the Forest Service as counsel for the United States  
34                  Department of Agriculture. Scott Horngren and Shay Scott appeared on  
35                  behalf of Boise Building Solutions, the proposed defendant-intervener.  
36                  The following motions were before the Court: (1) Proposed Defendant's  
37                  Motion to Intervene, (Ct. Rec. 7), (2) Plaintiffs' Motion for a Temporary  
38                  Restraining Order, (Ct. Rec. 3), (3) Plaintiffs' Motion for Leave to File

1 Overlength Memorandum in Support of Motion for a Temporary Restraining  
 2 Order, (Ct. Rec. 4), and (4) Defendant's Motion for Leave to File  
 3 Overlength Memorandum, (Ct. Rec. 16-1), and related motion for expedited  
 4 hearing, (Ct. Rec. 16-4). After reading all submitted briefs and  
 5 relevant law and considering the arguments of counsel, the Court, for the  
 6 reasons expressed below and at the hearing, **grants** the motion to  
 7 intervene, **enters** a Temporary Restraining Order, and rules on the page-  
 8 limitation motions.

9 **A. Proposed Defendant's Motion to Intervene**

10       **1. Intervention as of Right**

11       A non-party may intervene in an action either as a matter of right  
 12 or with the court's permission if the motion is timely filed. Federal  
 13 Rule of Civil Procedure 24(a)(2) allows intervention as of right if:

14       the applicant claims an interest relating to the property or  
 15 transaction which is the subject of the action and the  
 16 applicant is so situated that the disposition of the action may  
 17 as a practical matter impair or impede the applicant's ability  
 18 to protect that interest, unless the applicant's interest is  
 19 adequately represented by existing parties.

20       *Id.* Accordingly, to merit intervention of right, an intervening party  
 21 must demonstrate four conditions: (1) the application is timely, (2) the  
 22 party has a significantly protectable interest relating to the  
 23 transaction that is the subject of the action, (3) the disposition of the  
 24 action may impair or impede the party's ability to protect that interest,  
 25 and (4) the party's interests are not adequately represented by the  
 26 existing parties in the suit. *S.W. Ctr. for Biological Diversity v. Berg*,  
 27 268 F.3d 810, 817 (9th Cir. 2001).

28       Boise Building Solutions fulfills the characteristics to merit  
 29 intervention of right. First, the application was timely as Plaintiffs

1 filed their complaint on July 21, 2005, and Boise Building Solutions  
2 filed the Motion to Intervene on July 25, 2005. Second, Boise Building  
3 Solutions' interest in the timber sale contract, which will be affected  
4 by the holding in this case, provides the significantly protectable  
5 interest. *See Portland Audubon Soc'y v. Hodel*, 866 F.2d 302, 309 (9th  
6 Cir. 1989). Third, if the contract is enjoined in this case, Boise  
7 Building Solutions will not be able to recover the value of the timber  
8 and, thus, disposition of the case may impede its ability to protect its  
9 interests in the sale. Fourth, Boise Building Solutions' more narrow  
10 interests in the timber than the United States Forest Service provides  
11 sufficient consideration for the assertion that Boise Building Solutions'  
12 interests are not adequately represented. *See Trbovich v. United Mine*  
13 *Workers*, 404 U.S. 528, 538 (1972). Accordingly, the Court finds Boise  
14 Building Solutions may intervene as of right.

15       **2. Permissive Intervention**

16       Rule 24 provides for permissive intervention when an applicant's  
17 claim or defense and the main action have a question of law or fact in  
18 common. FED. R. Civ. P. 24(b)(2). The purpose of intervention is to  
19 prevent a multiplicity of suits where common questions of law or fact are  
20 involved. Rule 24 is to "be construed and administered to secure the  
21 just, speedy, and inexpensive determination of every action." FED. R.  
22 Civ. P. 1.

23       Boise Building Solutions asserts an interest in the Rollin Rock  
24 Project, the subject of this proceeding, and seeks to participate in  
25 defending this project in order to guard against a Court order barring  
26 the lumber harvest. Given Boise Building Solutions' interest, the Court

1 finds the just, speedy, and inexpensive determination of this case  
 2 requires Boise Building Solutions to be included in the present case.

3 For the reasons expressed above, Boise has demonstrated sufficient  
 4 cause to intervene as of right. Alternatively, this Court also  
 5 recognizes a basis for permissive intervention. For these reasons, the  
 6 Court grants Boise Building Solutions' Motion to Intervene.

7 **B. Plaintiff's Motion for Temporary Restraining Order**

8 **1. Standard for Issuance**

9 Plaintiffs are entitled to a temporary restraining order if they  
 10 demonstrate "(1) a likelihood of success on the merits and a possibility  
 11 of irreparable injury, or (2) the existence of serious questions on the  
 12 merits and a balance of hardships tipping in [their] favor." *Nat'l*  
*13 Wildlife Fed'n v. Burlington N. R.R.*, 23 F.3d 1508, 1510 (9th Cir. 1994)  
 14 (citing *Fund for Animals v. Lujan*, 962 F.2d 1391, 1400 (9th Cir. 1992)).  
 15 "These two formulations represent two points on a sliding scale in which  
 16 the required degree of irreparable harm increases as the probability of  
 17 success decreases." *Roe v. Anderson*, 134 F.3d 1400, 1402 (9th Cir. 1998)  
 18 (quoting *United States v. Nutri-cology, Inc.*, 982 F.2d 394, 397 (9th Cir.  
 19 1992)). Plaintiffs, as the parties seeking injunctive relief, bear the  
 20 burden of demonstrating these factors justifying relief by clear and  
 21 convincing evidence. See *Granny Goose Foods, Inc. v. Brotherhood of*  
*22 Teamsters*, 415 U.S. 423, 441 (1974).

23 "Injunctive relief is an equitable remedy, requiring the court to  
 24 engage in the traditional balance of harms analysis, even in the context  
 25 of environmental litigation." *Forest Conservation Council v. U.S. Forest*  
*Serv.*, 66 F.3d 1489, 1496 (9th Cir. 1995). The Supreme Court has held

1 insufficient evaluation of environmental impact under NEPA does not  
2 create a presumption of irreparable injury. *Amoco Prod. Co. v. Village*  
3 *of Gambell*, 480 U.S. 531, 545 (1987). However, the Court also observed  
4 “[e]nvironmental injury, by its nature, can seldom be adequately remedied  
5 by money damages and is often permanent or at least of long duration,  
6 i.e., irreparable.” *Idaho Sporting Congress Inc. v. Alexander*, 222 F.3d  
7 562, 569 (9th Cir. 2000) (citing *Amoco*, 480 U.S. at 545). Therefore,  
8 “when the environmental injury is ‘sufficiently likely, the balance of  
9 harms will usually favor the issuance of an injunction to protect the  
10 environment.’” *Id.*

## 11       **2. Application**

12 Plaintiffs seek a Temporary Restraining Order (“TRO”) against the  
13 United States Forest Service (“USFS”) to prevent logging from the  
14 contract awarded for the Rollin Rock sale, which is part of the Fischer  
15 Fire Project (“FFP”). Plaintiffs assert six grounds for relief: (1) USFS  
16 failed to prepare an EIS for the FFP in violation of the National  
17 Environmental Policy Act (“NEPA”), (2) USFS failed to disclose and  
18 analyze the environmental impacts of the FFP in violation of NEPA, (3)  
19 USFS failed to consider a reasonable range of alternatives in violation  
20 of NEPA, (4) USFS’s authorized snag removal in a managed late-  
21 successional area violates the National Forest Management Act (“NFMA”),  
22 (5) salvage within the Eagle MSLA for the purpose of economic recovery  
23 violates NFMA, and (6) USFS failed to comply with soil standards and  
24 guidelines in the LRMP in violation of NFMA. (Ct. Rec. 1)

25 After reviewing the submitted materials in light of NEPA and NFMA,  
26 the Court finds Plaintiffs have raised serious questions on the merits

1 and that the balance of hardships, given the significantly likely long-  
2 term environmental consequences of Defendants' proposed actions compared  
3 with economic benefits of such actions to Defendants, tip in favor of the  
4 issuance of a temporary restraining order of such conduct until the  
5 Court's ruling on Plaintiffs' Motion for Preliminary Injunction, to be  
6 heard on August 25, 2005. The parties are given leave to file a five-  
7 page memorandum by August 5, 2005, clarifying the number of acres  
8 proposed to be logged and supplementing their positions in light of the  
9 entry of a Temporary Restraining Order.

10 **C. Plaintiff's Motion for Leave to File Overlength Memorandum in  
11 Support of Motion for a Temporary Restraining Order & Defendant's  
12 Motion for Leave to File Overlength Memorandum**

13 Local Rule 7.1 for the Eastern District of Washington provides  
14 "[m]emoranda relating to . . . dispositive motions shall not exceed  
15 twenty pages without prior approval of the Court." *Id.* The Court  
16 agrees, in order to adequately brief the legal issues, Plaintiffs'  
17 twenty-eight page memorandum is appropriate. In addition, the Court  
18 gives the Government permission to file a twenty-eight page response;  
19 however, not a thirty-nine page response. Accordingly, the Government's  
20 thirty-nine page memorandum is stricken and the Government shall file a  
21 twenty-eight page response. Parties are cautioned further memoranda are  
22 restricted to the twenty-page limit.

23 Accordingly, **IT IS HEREBY ORDERED:**

24 1. Proposed Defendant's Motion to Intervene, (**Ct. Rec. 7**), is  
25 **GRANTED.** The caption is **HEREBY AMENDED** as follows: CONSERVATION  
NORTHWEST, a Washington non-profit corporation, and CASCADIA WILDLANDS

1 PROJECT, an Oregon non-profit corporation, Plaintiffs, v. The UNITED  
2 STATES FOREST SERVICE, an agency of the United States Department of  
3 Agriculture, Defendant, and BOISE BUILDING SOLUTIONS MANUFACTURING  
4 L.L.C., a Delaware limited liability company, Defendant-Intervenor.

5 2. Plaintiffs' Motion for a Temporary Restraining Order, (**Ct. Rec.**  
6 **3**), is **GRANTED**. A hearing on Plaintiff's Motion for Preliminary  
7 Injunction, (**Ct. Rec. 3**), is **SET** for **August 25, 2005, at 10:00 a.m. in**  
8 **RICHLAND**. The parties are given leave to file a five-page memorandum by  
9 August 5, 2005, clarifying the number of acres proposed to be logged and  
10 supplementing their positions in light of the entry of a Temporary  
11 Restraining Order.

12 3. Plaintiffs' Motion for Leave to File Overlength Memorandum in  
13 Support of Motion for a Temporary Restraining Order, (**Ct. Rec. 4**), is  
14 **GRANTED**.

15 4. Defendant's Motion for Leave to File Overlength Memorandum, (**Ct.**  
16 **Rec. 16-1**), is **GRANTED IN PART (leave to file 28-page memorandum) and**  
17 **DENIED IN PART (current thirty-nine-page** Memorandum in Opposition to  
18 Plaintiff's Motion for Temporary Restraining Order and Preliminary  
19 Injunction, (**Ct. Rec. 14**), is **STRICKEN**). **No other page extensions will**  
20 **be GRANTED**.

21 5. Defendant's Motion to Shorten Time as to Defendant's Motion for  
22 Leave to File Overlength Memorandum, (**Ct. Rec. 16-4**), is **GRANTED**.

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**IT IS SO ORDERED.** The District Court Executive is directed to file this Order and provide copies of this Order to counsel.

**DATED** this 28th day of July, 2005.

s/ Edward F. Shea  
EDWARD F. SHEA  
United States District Judge

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